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SERVICE DATE – MARCH 30, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. AB 364 (Sub-No. 16X)

MID-MICHIGAN RAILROAD, INC.—ABANDONMENT EXEMPTION—IN MUSKEGON
COUNTY, MICH.

Decided: March 27, 2015

Mid-Michigan Railroad, Inc. (MMRR) filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments to abandon a 3.35-mile line of railroad between milepost 191.40 and milepost 194.75, at the end of the line, in Muskegon County, Mich. Notice of the exemption was served and published in the Federal Register on April 20, 2009 (74 Fed. Reg. 18,020).

By decision and notice of interim trail use or abandonment (NITU) served on May 19, 2009, a 180-day period was authorized for the Michigan Department of Natural Resources (MI DNR) to negotiate an interim trail use/rail banking agreement with MMRR for a 0.5-mile portion of the right-of-way between milepost 191.40 and milepost 191.90, pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. § 1247(d) (Trails Act). A second NITU, also on behalf of MI DNR, was issued by decision served on July 12, 2010, for the remaining 2.85-mile segment of the right-of-way between milepost 191.90 and milepost 194.75. The NITU negotiating periods were extended several times, with the latest decision (served on June 10, 2014) extending them until October 20, 2014.

In a letter filed on January 23, 2015, MI DNR requests an extension of the NITU negotiating periods for an additional 180 days. In a response filed on January 30, 2015, MMRR states that it supports and has no objections to the extension request. MMRR also states that MI DNR and MMRR have been negotiating and will continue to negotiate for interim trail use/rail banking for the two segments.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction, and the NITU negotiating period may be extended. An extension of the NITU negotiating periods for both segments will promote the establishment of trail use and rail banking consistent with the Trails Act. Under the circumstances, further extension of the negotiating periods is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Vill. v. Mo. Pac. R.R., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating periods will be extended for an additional 180 days from October 20, 2014, until April 18, 2015. If an interim trail use agreement is reached (and thus interim trail use is

established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. MI DNR's request to extend the NITU negotiating periods is granted.
2. The NITU negotiating periods are extended to April 18, 2015.
3. If an agreement for interim trail use/rail banking is reached, the parties shall jointly notify the Board within 10 days that an agreement has been reached.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.